

John Pole, Esquire,
Appellant.

Samuel Gardiner, Clerk,
Respondent.

The Respondent's C A S E.

TH E Respondent is, and for twenty Years last hath been, Rector of *Eckington cum Killamarsh*, in *Com' Derby*, which consists of four Quarters, call'd *Spinkhil*, *Mosbrough*, *Eckington*, and *Troway* Quarters, and the Town of *Killamarsh*.

The Inhabitants of *Troway* Quarter, for their several Farms, pay several small Sums as *Modus's* for Tithe-Hay; in the whole amounting to about 11 s. for the whole Quarter, which contains above 1000 Acres.

All the other Quarters, and the Town of *Killamarsh* ought to pay Tithe-Hay in kind; but by reason of the inconveniency of gathering thereof, the Respondent hath usually taken a Composition for it of 12 d. an Acre for the Tithe-Hay of the low Meadow Grounds, and 8 d. an Acre for the high Meadow Grounds.

When the said Compositions were not paid, the Respondent and his Predecessors have taken the Tithe-Hay in kind; But the Parishioners were generally desirous to be under the Composition, because the Tithe-Hay was of something greater Value to them, having the Conveniency of fetching it away with their own Hay.

For these several Years last past the Respondent hath been a loser by frequent Neglects of the Payment of this Composition of 12 d. and 8 d. which was usually paid after the Hay-harvest; but not being paid, and the Tithe-Hay carried away, the Respondent got nothing.

Mich's 3rd 1705.
Anna K^{na}. To prevent these Inconveniences the Respondent did exhibit his Bill in the Exchequer for Tithe-Hay in kind against the Appellant, who insisted, in his Answer, That the Payment of these Sums of 12 d. and 8 d. were *Modus's*, and ought to be accepted as such by the Respondent, in lieu of Tithe-Hay in kind.

Hil. 1705.
&
Trin. 1706. After several Examinations of Witnesses, the Cause came to be heard before the Barons in *Hilary-Term*, 1705, who, after hearing Proofs on both Sides, were *all of Opinion*, and so accordingly Decreed, "That the said Payments of 12 d. and 8 d. an Acre were no *Modus's*, but *Temporary Compositions*; and that "Tithe-Hay ought to be paid to the Respondent; and Decreed the Appellant to Account for the same.

Which Decree is humbly conceiv'd to be Just, for these Reasons, amongst several others:

1. That Tithe Hay in kind, is to be paid of *Common Right* to every Rector, unless some ancient *Modus* be paid in lieu thereof, as in *Troway* Quarter.
2. That the Sums pretended to be *Modus's* in this Case, can only be *Temporary Agreements or Compositions*, by Reason of the Largeness of the Sums paid for every Acre; the said Sums of 12 d. and 8 d. in ancient Times when *Modus's* were introduc'd, being of much greater Value, than the Hay of a whole Acre.
3. That several Instances there are in Proof in this Cause, both in the Time of this Respondent, and his Predecessors, when sometimes the Parishioners have refus'd to pay, and sometimes the Incumbent to receive these Sums of 12 d. and 8 d. an Acre: And all those Times Tithe-Hay hath been paid in Kind.
4. That in all the Neighbouring Parishes to *Eckington*, the Rectors there make it their usual Way of Compounding with their Parishioners for their Tithe-Hay, at the like Rates of 12 d. and 8 d. an Acre, and yet have had their Tithe-Hay paid them in Kind, when ever they have thought fit, without any Pretence that these Payments are *Modus's*.
5. That considering so small a Sum as 11 s. is paid for Tithe-Hay of *Troway* Quarter, containing 1000 Acres, and so great Sums as 12 d. and 8 d. for every Acre of the other Quarters in the same Parish; No other Reason can be given, but that one is an antient *Modus*, and the other a late *Composition*.
6. That this very Matter was in Controversy in the *Exchequer*, in a Cause betwixt the Respondent and one Mr. *Wigfall*, an Inhabitant in *Spinkhill* Quarter, where Tithe-Hay was also decreed to be paid in Kind. *Anno 1702.* Which Decree is still in Force, and never since Question'd or Impeach'd.
7. That for the said 12 d. and 8 d. the Respondent has no *Legal Remedy*, as he is advis'd.
That the said Rectory is of great Extent, and has two Churches belonging to it; and the Respondent is oblig'd to be at great Charge in keeping a Curate.

Wherefore the Respondent humbly hopes, The said Decree shall be affirmed, and the Appeal dismiss'd with Costs.

Sam. Dodd.